

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

NANCY MARTIN and)	
MARY BETH BRACKIN,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:05-CV-1172-MEF
)	
CITY OF DOTHAN and JUDGE)	
ROSE EVANS-GORDON,)	
)	
Defendants.)	

MOTION IN LIMINE TO EXCLUDE EXHIBIT #3
TO PLAINTIFF MARTIN'S DEPOSITION

COME NOW Defendants City of Dothan and Judge Rose Evans-Gordon (collectively "Defendants"), by and through counsel, and respectfully request the Court to order that counsel for Plaintiff, and through such counsel, any and all witnesses for Plaintiff be instructed by an appropriate order of this Court to refrain from making, directly or indirectly, any mention of or reference to, in any manner whatsoever, either in opening statement, questioning of witnesses, closing statements or otherwise, any of the matters set forth below. Defendants state that the below-referenced matters are inadmissible as evidence for any purpose in that they have no bearing on issues involved in this case or the remaining claims in this lawsuit. Permitting interrogation of witnesses, statements or comments to the jurors or prospective jurors, or offers of evidence concerning these matters would

unduly prejudice Defendants and sustaining objections to such questions, comments, or offers would not cure the effects of such prejudice, but would rather reinforce the impact of such prejudicial matters on the jurors. Defendants request that the Court prohibit:

1. The introduction into evidence or any reference to Defendant's Exhibit #3 to Plaintiff Martin's deposition. Exhibit 3 to Plaintiff's Deposition is a document provided to Defendants at Ms. Martin's deposition.¹ This document purports to be a record of Magistrates that were allegedly improperly using an exit door that was not supposed to be used. This document is due to be excluded for multiple reasons.

2. First, this document contains inadmissible hearsay and none of the hearsay exceptions apply. Fed. R. Evid. 801-02. In addition, this document has not been authenticated and is, therefore, inadmissible. FED. R. Evi. 901. There is also no way to verify if the information contained in the document is accurate. Plaintiff Martin even testified that she does not know how this information was recorded. Martin Dep., p. 15, lns. 17-21.

3. Additionally, this information is not relevant and has little, if any, probative value. Plaintiff Martin testified that she believes Clerk Typist Bailey was keeping track of this information because Ms. Knight and Ms. McClain were

¹ After Ms. Martin was terminated, Clerk Typist Bailey gave this document to Ms. Martin. Martin Dep., p. 14, lns. 15-21. Ms. Bailey resigned in July 2004.

allegedly not obeying the rules and policies with respect to using certain doors as exits. The fact that Ms. Knight, Ms. McClain and others may or may not have violated this “rule” is not relevant to any issue in this case. Plaintiff Brackin is not claiming that she was disciplined or treated differently with respect to this rule. The admission of such evidence will only confuse the jury, distract the attention of the jury away from the determinative issues in this action, and result in a needless waste of time. See Fed. R. Evid. 403.

4. On the basis of the above reasoning, Defendants respectfully request that the Court exclude any testimony or evidence relating to door usage including, but not limited to, Defendant’s Exhibit #3 to Martin’s deposition.

Respectfully submitted,

/s/ Carol Sue Nelson

Carol Sue Nelson

One of the Attorneys for Defendants

OF COUNSEL:

Maynard, Cooper & Gale, PC
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, Alabama 35203
Phone: (205) 254-1000
Fax: (205) 254-1999

CERTIFICATE OF SERVICE

I hereby certify that on February 29, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Ishmael Jaffree, Esq.
800 Downtowner Blvd.
Suite 106 B
Mobile, Alabama

/s/ Carol Sue Nelson
OF COUNSEL